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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,234	08/21/2003	John R. Zaleski	2003P03508 US01	7160

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EXAMINER

GRAY, PHILLIP A

ART UNIT	PAPER NUMBER
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3767

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,234

Applicant(s)

ZALESKI, JOHN R.

Examiner

Phillip Gray

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/21/03, 5/27/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This Office Action is in response to the applicant's communication of 5/4/2006. Currently, elected claims 1-15 are pending and rejected below. Claims 16-17, are withdrawn by examiner, as drawn to a nonelected invention.

Election/Restrictions

Applicant's election with traverse of the information system supporting infusion pumps (claims 1-15) in the reply filed on 5/4/2006 is acknowledged. The traversal is on the ground(s) that, the examiner's contention that the system may be employed by different processes is "incorrect speculation"; and the bifurcation of the claims (restriction requirement) "bureaucratizes, prolongs and obfuscates" the search and examination. This is not found persuasive because the applicant's arguments fail to address the issues that determine if the restriction requirement is proper.

Instead applicant's representative argues that the restriction requirement process itself bureaucratizes, prolongs and obfuscates the search and exam process, and that the examiner is speculating about other processes the invention is capable of. Applicant's representative has given no argument to the contrary that applicants system as claimed can be used in a materially different process. Further Examiner states that the applicant's inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a

materially different process of using that product. See MPEP § 806.05(h). Applicant's representative has not argued against this fact.

The requirement is still deemed proper and is therefore made FINAL.

Claims 16-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention method, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/4/2006.

Information Disclosure Statement

Information Disclosure Statement, filed on 8/21/2003, contains an incorrect document number. The IDS lists a document number of "2002/0031944A1" of "Peterson et al.", examiner has not been able to find the Peterson application that corresponds to that number. Instead examiner found an application of "Tomomi Endo" for that document number. Examiner has not considered any reference for the document number of "2002/0031944A1"

Applicant is advised that the date of any re-submission of any item of information contained in the information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-15 are rejected under 35 U.S.C. 102(e) as being anticipated by De La Huerga (U.S. Patent Application Number US2002/0038392), herein after "Huerga". Huerga discloses a networked information system for controlling a plurality of infusion pumps. Huerga discloses a system comprising processors for acquisition of data, and data processing that are presented in a display image, which may display the status of the infusion pumps providing fluid infusion to a corresponding plurality of different patients in different locations. (see paragraphs [3]-[19], [186]-[234]). Huerga discloses

that at least one of the infusion related data may be shown by graphical representation on a first or second display; that data may be one of (a) pump location, (b) pump access address, (c) pump start time, (d) pump flow rate, (e) a fluid identifier in a pump and (f) fluid volume dispensed; or (a) a current fluid flow rate, (b) fluid volume delivered, (c) a fluid identifier, (d) an authorizing physician identifier, (e) a fluid infusion time remaining indicator, (f) a particular pump IP address, (g) a current time, (h) a user selectable data refresh rate, (i) parameters specific to said particular pump and (j) a user selectable item supporting user manual entry of a fluid infusion related value (see figures 27-29 and paragraphs [112], [133], [273]).

Huerga discloses that display images include a plurality of user selectable links associated with a plurality of concurrently operating infusion pumps and said system includes, a display processor for initiating generation of data representing a second image including parameters specific to a particular pump in response to user selection of a link associated with said particular pump (see figures 6,18,27-29,35-42 and paragraphs [192]-[219]), and generation of a third image enabling at least one of, (a) a user to alter an existing infusion flow rate or fluid volume delivered value and (b) a user to add a new infusion flow rate or fluid volume delivered value (see paragraphs [273][294]).

Huerga discloses authorization processors which could limit the presentation of information images or access to operations of a particular pump (see paragraph [160-161],[216]). Huerga discloses that the data processor may provide data to at least one of, (a) a repository of electronic patient medical records for storage in a corresponding

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plurality of electronic patient medical records in said repository, (b) a pharmacy information system for use in re-stocking medications, (c) a medication order information system for use in monitoring use of particular fluid medications and (d) a patient management information system for use in monitoring patient usage of fluid medications ([112], [293], [320]).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 15 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over De La Huerga (U.S. Patent Application Number US2002/0038392). Huerga discloses that the network for operating concurrently a plurality of infusion pumps could be connected to the Internet (see paragraph [149]), and be connected to an Internet Protocol (IP) compatible network where the pump access address is an IP address. Huerga discloses the claimed invention except for explicitly stating that the pump access address would be an Internet Protocol (IP) compatible network address. Huerga discloses that the network could be over the Internet, intranet, ect. It would be implicitly known that the network and pump access addresses be Internet Protocol (IP) compatible.

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If not anticipated by Huerga, one of ordinary skill would modify the Internet network and addresses to make them Internet Protocol (IP) compatible. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a pump access address, which would be an Internet Protocol (IP) compatible network address, since it was known in the art that provides a data-oriented protocol with the service of communicable unique global addressing amongst computers.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gray whose telephone number is (571) 272-7180. The examiner can normally be reached on Monday through Friday, 8:30 a.m. to 4:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



PAG

KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

